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been for more than two years prior to such application for a patent." The obvious construction of this section of the act is, that a purchase, sale, or prior use shall not invalidate, unless it amounts to an abandonment to the public. Although I am of opinion that the evidence exhibits a clear case of abandonment, as distinguished from the "purchase, sale, or prior use," which is tolerated for two years, it is not necessary to rest our decision on that point alone, or to attempt to draw a line of distinction which might be applicable to other cases. The prior use has been proved to have existed more than two years before application for a patent.

As I think the respondents have supported this plea they are entitled to a decree; I need not, therefore, enlarge upon the plea denying the infringement, further than to say, I think the respondents would have been entitled to a decree in their favor on that point also.

The bill must be dismissed, with costs.

In the Supreme Court of Pennsylvania.

THE PHILADELPHIA ASSOCIATION FOR THE RELIEF OF DISABLED
FIREMEN vs. GEORGE WOOD,

WHO WAS SUED WITH JAMES H. MONTGOMERY AND JOSHUA A. ASH.¹

The act of Assembly of May 7, 1857, imposing on the agencies of foreign insurance companies in the city of Philadelphia the duty of paying two per cent. on all their receipts to the Philadelphia Association for the Relief of Disabled Firemen, is so extraordinary in its character, of such very doubtful constitutional validity, so dangerous in its tendency as a precedent, and so unusual in respect to the form prescribed for the enforcement of its terms, that the judiciary will not enforce the bonds given by such agencies, for the payment of the said per centum on their premiums, to the said Association.

Error to the District Court of Philadelphia County.

The following facts were agreed upon, as a case stated for the opinion of the Court, with leave to turn the same into a special verdict.

The plaintiffs are an incorporation, created by act of Assembly

¹ We are indebted to the Legal Intelligencer for this report of the case.

of this State of 25th March, 1835, (P. L., p. 85, prout the same,) for the purpose of relieving disabled firemen, their widows and orphans, and persons sustaining injury by fire apparatus.

By act of 9th April, 1856, (P. L., p. 284,) entitled "An Act relative to Agencies of Foreign Insurance, Trust and Annuity Companies," insurance companies incorporated by other States or foreign governments, desiring to transact business in this State, are entitled to do so upon depositing with the Auditor-General certain statements of their condition, and complying with certain other conditions, and paying for transacting business in the city of Philadelphia the sum of two hundred dollars: upon doing which a license shall be granted to them for carrying on such business for the period of one year from the date of granting such license.

The Royal Insurance Company of Liverpool is an association of individuals, not incorporated by the laws of this State, doing business as a fire insurance company in the city of Philadelphia, having an agency established in said city, the defendant, George Wood, being their agent.

On the 28th January, 1857, the said The Royal Insurance Company of Liverpool, having in other respects complied with the provisions of the act of the 9th April, 1856, paid to the Treasurer of this State, for the use of the Commonwealth, the sum of two hundred dollars, as required by the said act, and received, in accordance with its provisions, from the Auditor-General, a license (prout the same) to carry on their said business by their agent, the said defendant, for the period of one year from the date of the granting of such license.

By an act of Assembly, passed the 7th May, 1857, relative to agencies of foreign insurance and trust and annuity companies in the city of Philadelphia, (P. L., p. 423, prout the same,) it is enacted, among other things, that there shall be paid to the treasurer of the Philadelphia Association for the Relief of Disabled Firemen, for the use of said Association, on the 1st day of February in each year, by every person who shall act, in the city of Philadelphia, as agent of any association of individuals, not incorporated by the laws of this State, to effect insurances against loss by fire

in the city of Philadelphia, the sum of two dollars upon the one hundred dollars, and at that rate upon the amount of all premiums which, during the year or part of a year, ending the next preceding 1st day of September, shall have been received by such agent, or by any person for him, for any insurance effected, or agreed to be, against loss or injury by fire, in the city and county of Philadelphia; and every such agent shall execute and deliver to the said treasurer a bond to the Philadelphia Association for the Relief of Disabled Firemen, in the penal sum of one thousand dollars, with sureties, conditioned, *inter alia*, that he will annually, on the 1st day of February, in each year, pay to said treasurer two dollars upon every hundred, and at that rate upon the amount of any premiums so received; and all previous laws inconsistent with the said act were thereby repealed.

On the 12th May, 1857, a supplement to the act of 9th April, 1856, (P. L., p. 458, prout the same,) was passed, embracing within its provisions all foreign associations, companies, and individuals, formed or established for insuring fire, marine, or life risks, &c., whether established on the stock or mutual principle, and dispensing with certain previous formal requirements.

On the 10th of July, 1857, the defendant, George Wood, agent of the Royal Insurance Company of Liverpool, with the defendants, James H. Montgomery and Joshua P. Ash, executed and delivered a bond to the plaintiffs, in the sum of one thousand dollars, (prout the same,) reciting the act of Assembly before mentioned, of 7th May, 1857; and conditioned that if the said Royal Insurance Company of Liverpool and the said George Wood, their agent, should truly perform every thing for securing performance whereof bond was by the said act required to be given, and of which performance might lawfully be required or requirable under said act, then the said obligation should be void, or else remain in full force.

On the 28th January, 1858, the said Royal Insurance Company of Liverpool, having previously applied in writing, and in other respects complied with the provisions of the act of 9th April, 1856, paid to the treasurer of this State, for the use of the Commonwealth, the further sum of two hundred dollars, as thereby required

and received, in accordance with its provisions, from the Auditor-General, a license (prout the same) to carry on their said business, by their said agent, for the period of one year from the date of granting of such license.

On the 28th January, 1859, the said The Royal Insurance Company of Liverpool, having in other respects complied with the provisions of the act of 9th April, 1856, paid to the treasurer of this State, for the use of the Commonwealth, the further sum of two hundred dollars, as thereby required, and received, in accordance with its provisions, from the Auditor-General, a license (prout the same) to carry on their said business by their said agent, for the period of one year from the date of granting such license.

No per centage upon the amount of premiums so received by the said Royal Insurance Company of Liverpool, and no part or sum of said moneys so received as premiums, respectively, has ever been paid by the said George Wood, agent, or by any other person on behalf of the said The Royal Insurance Company of Liverpool, to the plaintiffs, or to their treasurer, or any person on their behalf.

Suit was commenced by the said plaintiffs against the defendant, George Wood, and the said Ash and Montgomery, of whom only the said Wood was served with process, in which the plaintiffs declared upon the said bond (prout narr.) to recover the penalty thereof.

If, upon the whole case, the Court shall be of opinion that the plaintiffs are entitled to recover, then judgment is to be entered in their favor against the said George Wood, in the sum of one thousand dollars, with costs; but if the Court shall be of opinion that the plaintiffs are not entitled to recover, then judgment is to be entered in favor of the defendant, George Wood, with costs.

Judgment by Court below for plaintiff for \$1,000.

The opinion of the Court was delivered by

LOWRIE, C. J.—In April, 1856, the Legislature regulated the terms on which agencies of insurance companies, incorporated by other States or foreign governments, might transact their business within this State, and imposed an annual license fee of \$200 on

such as should be established in Philadelphia. In January, 1857, the Royal Insurance Company of Liverpool conformed to the terms of the law, paid the license fee, and commenced business there. In May, 1857, a law was passed, imposing on all such agencies in Philadelphia the duty of paying two per cent. on all their receipts to the Philadelphia Association for the Relief of Disabled Firemen, and requiring the payment thereof to be secured by bond, with a special and appropriate condition, and with proper sureties. In July, 1857, the defendant, as agent of the Royal Insurance Company, gave a bond, with sureties, not exactly with the condition required by the law, but generally for the performance of every thing required of him by the Relief Association under the law. He is now sued on this bond, his sureties not being served with process, and defends on the ground that the law is ineffectual and unconstitutional, as a means of imposing this duty upon him, and that the bond is void.

We notice that the Legislature does not call this burden upon the agencies of foreign insurance companies a tax, and we think it cannot properly be so called. Nor is it called a condition on which such agencies are to be allowed, and it is not a condition, for it is totally independent of the license, and by a different act of Assembly; the license is complete without the law imposing this burden. It is simply the creation of a relation or duty that had before no existence, and not the regulation of an existing one.

Such legislation is manifestly very extraordinary, and it is well to study all its peculiarities, in order that we may the better estimate its soundness.

It is a burden imposed upon agents of companies not incorporated by our State. It is, therefore, intended to distinguish between our own corporations and those of other people, so as to impose heavier burdens on the latter than on the former. So far as this relates to corporations created by our sister States, it has often been doubted by our most eminent jurists and statesmen whether this is not forbidden by the nature and spirit of our Federal Union, and by the Federal Constitution, which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." We do not under-

take to decide this question now, but to show how doubtful is the constitutionality of such distinctions, we refer to many able opinions on the question published in connection with the cases of the *Fire Department of New York vs. Noble & Wright*, 3 E. D. Smith's Rep. 440, 453.

Such legislation seems hardly consistent with the usual comity or political generosity which we exercise in our relations with the citizens of sister States, or even with those of stranger States. We allow aliens, even those who have no intention to take a permanent residence here, to carry on among us every sort of lawful business on the same terms as our own citizens. This would seem to be a necessary result of that fraternal generosity which each State of the Union owes to every other State. No one ought to insist on that Utopian and impracticable cosmopolitism that would, in all cases, put the citizens of foreign States on an entire equality with our brethren.

All will admit that our government ought to regulate the terms on which insurance companies of sister States may do business here, because this may be necessary for the security of our citizens dealing with them. And it is quite as clear that these companies ought to be taxed on their business here for the support of the public burdens.

We admit, also, that the protection against unequal treatment in taxation, which is afforded by the principle of international or interstate comity, is no exclusion of ungenerous legislation, but only a motive for abstinence from it. That motive ought to be much more powerful against legislation like this, which contains not a mere interstate distinction, but a distinction within the State: for it imposes burdens upon agents doing business in Philadelphia, and not upon those doing the same business in other parts of the State, and upon one class of business without any like burden upon any other class. Yet, if this is taxation, we do not see how we can pronounce it unconstitutional, merely on the ground of inequality, for this is unavoidable; approximate equality is all that is to be expected, and classification is unavoidable, for different subjects of taxation must be reached in different forms. But it becomes very

dangerous to the principle of equality, and may become very tyrannical, when very small classes, which enjoy but little of the support of public sympathy, are selected out as special subjects of taxation.

The objection to this kind of legislation is much more serious, that the act of 1857 simply and arbitrarily imposes upon the agents of foreign insurance companies the duty of paying two per cent. of the premiums received by them to a private corporation in Philadelphia.

Of course there was a good motive for this. The relief of disabled firemen is a purpose worthy of a society. And firemen contribute much to save insurance companies from losses. And hence it is inferred that insurance companies ought to contribute to the support of those who have been disabled in working for their benefit. But the same argument might be quite as effectually used as a reason for imposing a burden in favor of this society, upon those who obtain insurances, and much more so upon those who do not insure at all. Therefore, since the chief characteristic of justice is its equality, the justice of this provision is very far from being apparent. An untrained and unthoughtful benevolence is very apt to be unjust to those interests which do not attract its special attention.

This is an association for charitable purposes, it is true, but still it is strictly a private corporation. No public officer has any official knowledge of its existence, or of its members, organization, or acts. It renders no account of its proceedings or of its funds. It is a close corporation, fixing its own terms of membership, and changing its organization, but not its object, as it pleases. The imposition upon the defendant below, or on his principals, of the duty of contributing to its support, is, therefore, simply taking one man's property and giving it to another. It is depriving a man of his property without due process of law, even when it is sought to be done through the instrumentality of the courts, for the Legislature cannot require one man to give his money to another, and then give him an action to enforce their will, and expect this to be treated as a remedy by due course of law.

If the Legislature may command such a contribution as this, we

are unable to see why they may not command every citizen to contribute not only to this association, but to every charitable association, and, indeed, to every man who spends his time and means in a charitable way. There are associations for all sorts of charity; why may not the Legislature require us all to contribute to them all, if they may require this class of people to contribute to this one? We cannot answer this question.

We have said this is not a tax. It does not profess to be. It has none of the forms of taxation in the mode of its collection. And if it were called a tax, it could not be one, for a name arbitrarily given cannot change its nature. A tax is an imposition for the supply of the public treasury, and not for the supply of individuals or private corporations, however benevolent they may be.

It is the legislative power that is vested in the Legislature, and of course this includes tax legislation; and this means the making of laws that are to furnish the measure of every man's duty in support of the public burdens, and the means of enforcing it. Certainly it is not plain that, in either form or substance, this is tax legislation. If it is a mere requisition that one class of men shall pay their money to another class, it is no legislation at all.

The old monopolies, which played so important a part under some English monarchs, and in the development of English liberty, were professedly grants to meritorious public servants, (though often they were only favorites,) of the exclusive right to trade in or to import certain kinds of merchandise; and this, of course, gave them the profits of such trade, and a large control over every one who needed the given class of articles. Of course it was said that, if people desired to prevent such profits, they could abstain from the use of the articles; as it is said here, if these agencies will not bear the imposition, they can abandon the business. But this answer was not satisfactory then, and cannot be now, for the simple reason that in neither case is it for the support of the public burdens, but for private account.

If great public service, or great expectation of public service, charitable or otherwise, is to be the ground for justifying such grants, we know not why they should not be much more liberal

towards firemen than this: for they are continually rendering good service to the people. It is, perhaps, a little more important to know and to notice that they are a body of great influence, and are thus likely to be favorites of those in power, and to have the rights of others overlooked when it is important to please them. They may come to think hereafter, if this grant be admitted to be reasonable, that it is quite as reasonable that they should have a grant of two or of twenty per cent. of the rents of all the houses in the vicinity of their respective engine houses, on account of the protection they give them. Now-a-days, when it has come to be considered that the ancient and valued right of petition is fast giving away to the influence of paid borers and of private solicitation, when the public voice is so little heard in legislative halls, and so seldom expressed in legislation, and when legislative time and talents are invoked much more for special schemes, and by the private calendar, than for measures of general welfare, it becomes very important to watch such grants as this. There are very many such bodies as the firemen, which, if they choose to exert their influence, will find themselves able to control their immediate representatives, even to the detriment of the public interests, and against any supposable public will.

We have said that this imposition is not a condition of a grant to the agencies of the right to engage in the insurance business. They needed no such grant. There is a prohibition until certain terms are complied with, and then the license is granted. This imposition is entirely independent of all that, and has nothing in its form or nature that likens it to a condition either precedent or subsequent. It is simply a decree that one class of men shall pay to others a share of the profits of their business.

True, the Legislature might have imposed an equivalent tax on the business, and, when paid into the public treasury, might have appropriated it to this association. But would the Legislature make such an appropriation of public funds? In this case, it is quite apparent that the form of the proceeding belongs to the very essence of the provision made for the public safety. The imposition on this agency amounts now, at two per cent., to \$1,500 a

year, and ten such agencies would give the Association \$15,000 a year. It is certain it could have got nothing like this in the annual appropriation bill. We are quite sure that no such bounty was intended when the law was passed, for the bond to be given to secure the payment, and which may be the only security for many years, is in the penal sum of only \$1,000.

And, finally, if this imposition may be properly called a tax, then we seriously deny the authority of the Legislature to impose upon the courts the duties of the tax collectors, and especially so when the tax is for private account, and not for the public treasury. When they do so, this court or any other may reject the function, whether it comes up by action merely on the duty imposed, or on a bond given to secure the duty. The courts are not to be tax collectors in any form, except as a consequence of some dispute arising in the process of collection, where judicial intervention becomes necessary, or as a means of enforcing official duty, or where the ordinary means of collection have failed. Even if the ordinary municipal liens for paving, &c., are taxes, the courts have nothing to do with them, though entered on their records, except to oversee the enforcement of the lien, if any dispute arise.

Considering, then, that this imposition is so extraordinary in its character, of such very doubtful constitutional validity, so dangerous in its tendency as a precedent, and so unusual in the form of its enforcement, we must most respectfully decline, for the judiciary department of the government, the enforcement of the bond given to secure its payment.

Judgment reversed, and judgment for the defendant below, with costs, and record remitted.